

# Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

## Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

## Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

## Title 08

# DEPARTMENT OF NATURAL RESOURCES

## Subtitle 02 FISHERIES SERVICE

### 08.02.08 Shellfish—General

Authority: Natural Resources Article, §§4-206, 4-215, 4-1007, 4-1020, 4-1028, 4-1033 and 4-1035, Annotated Code of Maryland

#### Notice of Proposed Action

[24-199-P]

The Secretary of Natural Resources proposes to amend Regulations .09 and .12 under **COMAR 08.02.08 Shellfish—General**.

#### Statement of Purpose

The purpose of this action is to create a no-cost declaration of intent for shellfish dealers who purchase soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters in order to facilitate current reporting and tax payment requirements. This will be an annual requirement that dealers may complete either at license renewal or at any other point during the year prior to purchasing soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters. Dealers who have not declared their intent to purchase soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters would not be able to do so until their declaration was complete. Only dealers who are licensed by the Department of Natural Resources and licensed and certified by the Department of Health are allowed to deal in soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters because those species are typically sold for human consumption. Dealers who have not declared their intent will be exempt from the reporting requirements that are otherwise required when engaging in that activity.

The current state of dealer reporting and shellfish tax payments made through the existing buy ticket system results in the receipt of

less than 100 percent of reports and taxes owed by dealers. Currently, the Department does not know which dealers are actively buying oysters and clams in a season unless those dealers choose to submit buy tickets and taxes. Requiring dealers to declare their intent to purchase soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters will allow the Department to know which dealers are expected to report each season, allows for easier follow-up with late reporters, allows the calculation of reporting rates, and would aid in identifying dealers who may owe shellfish taxes. This also aligns with the existing requirement that oyster and clam harvesters must declare their intent to harvest each season. Currently, all dealers are required to report shellfish purchases either weekly or monthly, depending on level of activity, unless they have indicated to the Department that they will not be purchasing oysters or clams for some period of time. This action proposes to waive this requirement until a dealer has declared their intent to buy soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters in a season, which will alleviate having to report “no activity” by those dealers. Lastly, by limiting this declaration requirement to those dealers who are buying soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters, the Department is exempting those dealers who only deal in razor clams, which are prohibited from being sold for human consumption and for which taxes are not required to be paid.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action may have positive impact both on Department revenues and on the wild oyster fishery due to enhancing the Department’s ability to properly collect the taxes due. Those taxes are used exclusively for oyster repletion activities, which benefit the wild oyster fishery by enhancing populations of wild oysters in areas that are available to harvest.

**II. Types of Economic Impact.**

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency: Maryland Department of Natural Resources	(R+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
D. On regulated industries or trade groups: (1) Shellfish Dealers (2) Shellfish Harvesters	(-) (+)	Indeterminable Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. This action will likely result in the Department realizing increased revenues from required oyster taxes. The Department is not currently able to ascertain which of the over 2,000 licensed dealers will be dealing in shellfish during a license year. By requiring dealers to declare prior to dealing in shellfish, the Department will know which dealers owe severance and export taxes. It is believed that the number of dealers actually dealing in shellfish is less than 10 percent of the total number of dealers.

D(1). It is possible that some number of seafood dealers who have been dealing in shellfish have not been reporting that activity or paying the required severance and export taxes. For those dealers who have been out of compliance, this action will make it easier for the Department to ascertain when they are failing to pay those taxes. Ultimately, this may result in a negative economic impact to those dealers who will now be brought into full compliance with the tax requirement. It is not known how many dealers this may affect or how many bushels of oysters or clams for which taxes were not being paid.

During the 2023—2024 oyster season, there were 2,337 individuals with a Department of Natural Resources Tidal Fish Dealer license. Any of those licensees that also have a Maryland Department of Health (MDH) license can purchase and sell shellfish. Currently, there are 225 individuals that hold a MDH license as listed on the Interstate Certified Shellfish Shippers List (ICSSL). So, if all MDH license holders also had a DNR Tidal Fish Dealer license, then the maximum number of shellfish dealers that DNR could expect buy tickets from would be 225. Since DNR and MDH use two different systems, the information cannot be compared easily to determine how many licensees have both. While the actual impact is therefore indeterminable, the Department received buy tickets from 66 dealers in the 2023—24 season. From a historical perspective, the Department received buy tickets from 75 dealers in the 2014—15 season, 31 dealers in the 2004—05 season, and 67 dealers in the 1994—95 season.

D(2). Assuming that the Department is able to collect additional taxes that have not been paid in years past due to the increased ability to know which dealers owe taxes, shellfish harvesters will

experience an indeterminable positive impact. Taxes collected from dealers are used exclusively for shellfish repletion activities. This means that more shellfish will exist for harvesters to be able to harvest and sell.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows:

This action may have a negative impact on seafood dealers who have previously avoided paying taxes while having positive impacts on all small businesses that participate in the commercial harvest of oysters. See sections D and E for additional detail.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Shellfish Dealer Declaration Regulations, Regulatory Staff, Maryland Department of Natural Resources, Fishing and Boating Services E-4, 580 Taylor Avenue, Annapolis MD 21401, or call 410-260-8300, or email to complete the comment form at: <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx#oync1>. We would like all comments to be sent via Google Form. Comments will be accepted through May 19, 2025. A public hearing has not been scheduled.

**.09 Seafood Dealers.**

A.—C. (text unchanged)

*D. Declaration.*

(1) *Prior to purchasing soft-shell clams of the species Mya arenaria, hard-shell clams, or oysters, a person licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland and licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07, shall on a form provided by the Department:*

(a) *Declare their intent to deal in shellfish; and*

(b) *Provide their certification number issued by the Maryland Department of Health.*

(2) *A declaration of intent under this section shall be valid for the remainder of the license year.*

**.12 Reporting.**

A.—C. (text unchanged)

**D. Requirements for Return of Documents.**

(1)—(2) (text unchanged)

(3) Exceptions.

(a)—(b) (text unchanged)

(c) *A person who has not declared their intent to buy soft-shell clams of the species Mya arenaria, hard-shell clams, or oysters in accordance with COMAR 08.02.08.09 is not required to submit the reports described in this regulation.*

JOSH KURTZ  
Secretary of Natural Resources